

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN MARK NOENNIG**, on January 14, 2003 at  
3 P.M., in Room 472 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Mark Noennig, Chairman (R)  
Rep. Eileen J. Carney, Vice Chairman (D)  
Rep. Scott Mendenhall, Vice Chairman (R)  
Rep. Arlene Becker (D)  
Rep. Rod Bitney (R)  
Rep. Larry Cyr (D)  
Rep. Ronald Devlin (R)  
Rep. Gary Forrester (D)  
Rep. Ray Hawk (R)  
Rep. Hal Jacobson (D)  
Rep. Jesse Laslovich (D)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Penny Morgan (R)  
Rep. Alan Olson (R)  
Rep. Holly Raser (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Connie Erickson, Legislative Branch  
Linda Keim, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

The time stamp for these minutes appears at the  
beginning of the content it refers to.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 146, HB 142, 1/7/2003  
Executive Action: HB 132, HB 147, HB 146

**HEARING ON HB 146**

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 10.9}***

**Sponsor:** REPRESENTATIVE FRANK SMITH, HD 98, POPLAR

**Opening Statement by Sponsor:**

**REP. FRANK SMITH** stated HB 146 would prohibit expenditures for the Capitol-For-A-Day program. The bill came about because of constituent requests to discontinue it because of the cost, as was done in many other states. He said the governor's office may not have considered the amount of money required by other sources. The cost of an airplane, chartered buses, and highway patrol services should all be considered in evaluating the cost of this program.

**Proponents' Testimony:** None

**Opponents' Testimony:**

**Tom Beck, Chief Policy Advisor for Governor Martz**, noted the separation of powers in government: the legislative, judicial and executive branches. He stated: "One branch is not to oversee the other branch." This bill says to the executive branch that they are dictating certain things that can't be done in the performance of duty, and is outside the bounds of the constitution. To take this further, if the executive branch said to the legislative branch "If you have an interim committee, we do not want you to have a hearing out in the field," it is the same. The purpose of Capitol-For-A-Day is to get out and visit with the people and not have the people come to us all the time. It gives us an opportunity to see what is going on around the state. As far as the expense goes, everyone who participates in Capitol-For-A-Day receives pay for that day, whether they are sitting in Helena or they are at Capitol-For-A-Day. The airplane is an additional expense, however, many times an airplane is not used unless they plan to travel to the extreme eastern part of the state. Usually the motor pool is used. This program was started by Governor Schwinden and Governor Martz is following through on a limited basis. He urged a do not pass on HB 146.

**Kris Goss, Policy Advisor for K-12 Education**, said that he previously coordinated Capitol-For-A-Day. In 2002, the Governor, her staff and cabinet visited 13 counties for a total expense of \$7,140. This includes airplane costs, pilot fees, driver fees, motor coach rentals, etc. All of those fees are contributed by 14 executive branch agencies in Montana at \$476 per agency. The criteria for selection of Capitol-For-A-Day requires one site per

county, keeping a geographic balance throughout the six tourism regions. Local chambers of commerce, municipal and county governments are then contacted to assist with the onsite planning of these events. A typical schedule includes visits to the school, courthouse, state offices and local businesses. Time is also set aside for citizens to approach agency directors with concerns or solutions they may have. Their stay usually ends with a meeting between the Governor, her cabinet and local paid elected officials.

Many towns were unable to come today but have submitted letters for the record. These letters include correspondence from Malta Public Schools, Sidney Public Schools, Sidney Chamber of Commerce, Malta Chamber of Commerce and other towns throughout the state which have been visited. Also included is a mock schedule used in the city of Malta.

**EXHIBIT (1oh07a01) .**

The benefits of Capitol-For-A-Day are 1) citizen access to government, 2) economic development, and 3) education. Montana's outlying counties deserve a voice in the affairs of state. The best example of (1) is Circle, a small town in eastern Montana, located "70 miles from everywhere." When the Governor flew into Circle, each resident, as well as people from outlying McCone County, was able to visit with agency directors, the Governor and her staff. The issues surrounding economic development (2) are important to hear first-hand. Sidney was recently selected for a malt processing facility by Anheuser Busch. The groundwork was laid in Sidney at Capitol-For-A-Day when the Governor, her cabinet and staff were able to meet with Sidney economic development officials and Anheuser Busch. Because of this program, that facility is now going to be built in Sidney. Every county is working on ways to strengthen their public schools (3). In Malta, the Governor, Lieutenant Governor and policy advisors were able to see how the school had been rebuilt after a tragic fire. The Governor was able to hear first-hand the many problems facing a lot of schools and learned from the superintendent, the students and teachers how we can improve not only Malta public schools, but schools around the state. These are the items that benefit the Governor, her staff, and cabinet, as well as the people in those local communities. Mr. Goss urged a do not pass on HB 146.

***{Tape: 1; Side: A; Approx. Time Counter: 11 - 18.5}***

**Donna Sevalsted, Beaverhead County Commissioner**, said that she also represented the Beaverhead Economic Development Corporation and the Beaverhead Chamber of Commerce. The Capitol-For-A-Day program was in Beaverhead County this past spring. She said that this is an effective way for elected officials to reach out to

local constituents all over the state. With everyone in the same room, they accomplished some minor projects they had been working on for a long time via telephone. It also energized and motivated their citizens. They oppose HB 146.

**REP. DON STEINBEISSER** said that he agreed with remarks made by Kris Goss. Sidney is located 500 miles from Helena. They had a very successful Capitol-For-A-Day in Sidney and completed the deal with Anheuser Busch that day. Had they not held Capitol-For-A-Day, the Governor would have had to make another trip to Sidney. He urged a do not pass on HB 146.

**Tom Figarelle, representing FORWARD MONTANA**, said that he opposed HB 146 and agreed with the points made by the previous opponents. He explained that FORWARD MONTANA is an organization set up to represent young people across the state. Their mission is to promote certain ideals that will ensure a better future for all Montanans. They look for solutions that will have both immediate and long term benefit. The Capitol-For-A-Day program captures the true essence of local government and facilitates government involvement, especially for those who live in remote areas. In the last four general elections in the U.S., Montana was ranked last in voter turn-out below the age of 24. Capitol-For-A-Day will promote more interest in government because government officials visit elementary, middle schools and high schools.

**Patty Cowan, Powell County Chamber of Commerce**, said that when Capitol-For-A-Day came to Powell County, she found that it promoted a relaxed atmosphere with the Governor and her staff. Due to this, they quickly learned all the true facts about a hot issue. Visiting the schools is a must for the Governor because it is necessary to keep in touch with our children. Children learn that the Governor is a real person who started with a small job and was able to grow with the government. They benefitted from Capitol-For-A-Day because they were able to let the Governor know what they were trying to promote as far as cultural heritage tourism. The Governor had never been through their town or through any of their facilities before.

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 19.4}***

**REP. LASLOVICH** asked if there was a fiscal note for this bill.

**REP. SMITH** answered no, that it was within the Governor's budget.

No further questions were asked.

**Closing by Sponsor:**

**REP. SMITH** said that Capitol-For-A-Day is just serving certain towns and he does not believe this is an economic development bill. He said the \$7,000 expense of the program could be better spent somewhere else. He felt this is just a campaign program that everyone is going along with and asked for a do pass.

**HEARING ON HB 142**

***{Tape: 1; Side: A; Approx. Time Counter: 20.9 - 23.2}***

**Sponsor:** REPRESENTATIVE RON DEVLIN, HD 3, EASTERN MONTANA

**Opening Statement by Sponsor:**

**REP. RON DEVLIN** said that the Montana Association of County Governments (MACO) asked him to carry this bill. The bill inserts "local government" along with state agency or federal agency in the preparation of environmental impact statements. He said most local government and industry people agreed with the intent of the bill which was to grant local government cooperating agency status so they would be brought into consultation in planning certain projects.

**Proponents' Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 23.2 - 30.0}***

**Harold Blattie, Assistant Director Montana Association of Counties (MACO)**, said that the intent of the bill is just to get local government a seat at the table. Many agency actions have a direct effect on local government's ability to provide services to their residents, and they should be able to participate in those discussions. A letter of support from the Powder River Board of County Commissioners was submitted for the record. He also conveyed support for the bill from the Cascade County Board of Commissioners.

**EXHIBIT (loh07a02)**

**Willie Duffield, Assistant Director of Montana Association of Oil, Gas and Coal Counties (MAOG&C)**, said that this bill is here because of what took place in Powder River County a year ago when they were doing the Environmental Impact Statement (EIS) on Otter Creek Tracts. Powder River County Commissioners had asked Governor Martz for cooperating agency status so they would be at the negotiating table providing input. She advised the commissioners that there was no law which would allow her to do that. As a result, it was MAOG&C's intention to try to get a law

allowing local government involvement at the table, not only when EIS statements were being prepared, but whenever any big project was being developed in the county. By involving local government, they feel the process will be speeded up, and a lot of problems will be eliminated before they become lawsuits.

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 9.8}**

**Ann Hedges, Montana Environmental Center,** said that they support the bill and see no harm in it. She said: "It only stands to reason that local government should have to be consulted and be allowed to comment."

**Peggy Trenk, Montana Association of Realtors,** said that they had a spirited discussion about the possibility of this delaying the process, but in the end they decided that local government should play a part in the decision-making role.

**Ellen Engstedt, Montana Wood Products Association,** said that particularly in rural areas, the decisions made in Washington, D.C. or Helena could be difficult for local people to live with. They appreciate the idea that local officials would be consulted on projects affecting their citizens. One concern that had been expressed was the issue of how to deal with multiple counties. There are forests and pipelines, etc. in multiple counties, and this needs to be addressed. If this problem can be cleared up, they will support the bill.

**Donna Sevalsted, Beaverhead County Commissioner,** said that HB 142 originated in their county, and they support it. Beaverhead County is one of the only counties in Montana that is a full-line cooperating county with the federal agencies. With this bill, they are trying to establish the same right with state agencies.

**Walter Congdon, Deputy County Attorney Beaverhead County,** said that he had done a lot of land-use work around the state in various capacities. The Deputy County Attorney's office found that the National Environmental Policy Act (NEPA) had a provision for one of three types of participation by local government: 1) coordination, 2) collaboration, and 3) cooperation. All are very different in terms of the obligations of the parties involved. Montana copied the federal statute, like most states did, and adopted what became the Montana Environmental Policy Act (MEPA). Somehow the words "local government" were deleted from this section. As a result of efforts with certain federal agencies, Beaverhead County elected to fund and participate as a cooperating agency with the Bureau of Land Management (BLM), and the forest service, in the process of doing land use plans. In order to do this, they had to hire personnel and commit some

county resources. If this is passed and a local government becomes a cooperating agency, they will get to sit in on the meetings, they will be a member of the ID team, and they will help with the process of scoping (analyzing the alternatives). They also will take on the obligation of raising any concerns they have as early in the process as they can under the federal guidance. If a concern is raised, they have the obligation to provide a viable, reasonable alternative.

Presently local government has the right to do what everyone in the room can do: they can submit one comment. If you pass this change, local government does not get to make the decision, but it gets to participate at the table in the process of making the decision. That is the difference. In Beaverhead County, they have taken the position that the participant cannot be the decision making body. Their commissioners do not always get to be the county's representative in the planning process. It has taken them several years, but now their contribution to the process has become significant, because they have a pipeline to the local public which state and federal agencies do not have. The bill would not change how the decision is made and it would not take more time or change the process. All that is being done is allowing local government the ability to be an official participant. Mr. Congdon urged support of HB 142.

#### **Opponents' Testimony:**

***{Tape: 1; Side: B; Approx. Time Counter: 9.8 - 13.3}***

**Aidan Myhre, Montana Dakota Utilities Company (MDU)**, said that they oppose this bill. Local government input is valuable to this process. The concern is that this bill would put any local government unit, city, or county in a position to be able to use MEPA as a tool to oppose a project (getting a state permit). They believe in state permitting because: 1) It prevents or mitigates some of the NIMBY syndrome (Not In My Back Yard). If a project involves multiple counties or multiple cities, there is the opportunity for one local government to seriously stall or delay that process. 2) State agencies work cooperatively together and have experts in the fields of air quality, water quality, etc. who bring technical expertise to the table. Local governments do not have the technical expertise that is essential to this process, and bring more subjectivity, so MDU feels this bill would stall the permitting process. An example would be a multi-state pipeline that goes across Montana. "It is significantly buried, but bitterly opposed by one community along the entire length of the pipeline." This bill would give that local government the power to stop or stall the process. Ms. Myhre said that MDU hopes to work with the sponsor to make an

amendment or a resolution that would define "impact" in order to strengthen this bill so they could support it.

**Informational Testimony:**

**Mike Barrett, Citizen and Poet**, spoke and presented information.  
**EXHIBIT**(loh07a03)

**Questions from Committee Members and Responses:**

*{Tape: 1; Side: B; Approx. Time Counter: 17.1 - 26.9}*

**REP. MORGAN** asked Ms. Myhre what kind of amendment she would consider. **Ms. Myhre** said they were still looking at potential amendments, but one idea would be to define "impact" so the local government could say what they would do to either stall or stop the process. Another amendment might want to look at how to address multi-county projects differently. The concern is that if there are six or seven counties involved in a state pipeline, there could be one that says no. That could be changed to two or three, two thirds or something similar in an amendment.

**REP. LAWSON** asked if local government would have enough influence to stop or directly influence anything that the opponents have talked about. The bill says "consult with" and "obtain the comments of." It doesn't say anything about voting power or veto power. **Mr. Congdon** said that is what he said. It does not change the process whereby permits are given, in the sense that the state agency still has the requirement to make the decision in a certain time-frame pursuant to the Administrative Procedures Act. What this changes is the issue of whether the local government participates at the table in terms of hearing what gets said, and in terms of offering comment at that time and proposing alternatives. It will not add delay and does not change the procedure. The decision still has to be made by the state agency. Local government cannot veto the process.

**REP. LAWSON** asked **CHAIRMAN NOENNIG** to see if anyone was in the audience who could give a second opinion, but no one volunteered. He will talk to someone prior to executive action.

**REP. OLSON** said that three Environmental Impact Statements (EIS) were conducted on Bull Mountain and received a lot of input from local government. **REP. OLSON** asked if counties will have the technical expertise to recommend reasonable alternatives, or simply emotional alternatives. **Mr. Congdon** said that local government input is required in the federal process, and he believes that counties have the expertise in certain areas to recommend alternatives. Federal rules that came from the Council



on Environmental Quality said that in areas of economic impact, social impact in the community, custom, and culture, local government is probably the expert. Memorandums of understanding with the Forest Service and BLM limit the scope of cooperation.

**REP. OLSON** said defining economic and social impact can be rather technical descriptions in major projects, going back to the NIMBY syndrome. That is why he wanted to know if local government had the technical expertise and not simply use economic and social impact as an excuse to hold up a project. **Mr. Congdon** said local government is charged with commenting and consulting. The agency still has an obligation to go on and make a decision. If local government doesn't have good science or a good data base, the agency is free to say they don't buy your data; thank you for the alternative. When Beaverhead County took on the project, they had to have a data base to be at the table. If a local government says that they don't like the analysis of social impact, under federal guidelines, they have to provide an alternative.

**REPRESENTATIVE MAEDJE** stated it was said that this could be used as an excuse to invoke MEPA, and asked how they would do that.

**Ms. Myhre** said that she understood that by merely being involved, the local government would have a tool to delay or stop the MEPA process because they simply don't like it.

**CHAIRMAN NOENNIG** referred to previous testimony about the rules under NEPA, said he is not familiar with the rules under MEPA, and asked if the same rules would apply.

*{Tape: 2; Side: A; Approx. Time Counter: 0.0 - 7.2}*

**Mr. Congdon** said that the guidelines are the same, but the state could adopt its own if it chose. Or local government and the state in each process can probably define guidelines. **CHAIRMAN NOENNIG** referred to the concern about dealing with more than one local government and asked what the national guidelines are when NEPA deals with more than one state. **Mr. Congdon** said that he didn't think there were any. Beaverhead County feels that it would be appropriate to not address that question. It should not be a requirement for the local government. The city of Dillon is not participating in its forest use process, but its local government, Butte-Silver Bow County and Deer Lodge County are both affected by the Beaverhead-Deer Lodge National Forest. They were not cooperating, coordinating, or collaborating because they were not interested. Beaverhead County and Madison County are both interested and they are participating. Counties from place to place will make different decisions, and each local government will make its own decision, so the language works well. **CHAIRMAN**

**NOENNIG** asked if that was also the case with states and the NEPA process. **Mr. Congdon** said that he understood that each state had the option to participate, but is not required to participate.

**CHAIRMAN NOENNIG** referred to EIS, and asked if what it does is evaluate the impact. **Mr. Congdon** said that a broad definition is what some localities would want, but a narrow definition is what others would probably want. **CHAIRMAN NOENNIG** asked if there is one. **Mr. Congdon** said that he is not aware of one. **CHAIRMAN NOENNIG** asked if there is a NEPA definition. **Mr. Congdon** said that there is no NEPA definition either. NEPA rules have been broadly construed, so as a guideline, one can read the NEPA CEQ guidelines. In doing so, it will be noted that they are meant to err on the side of including as many people as possible.

**REP. MENDENHALL** asked for an example of a situation where this might apply. **Mr. Blattie** gave the example of the transfer of the federal mineral rights as directed in the Crown Butte buy-out to Otter Creek Tracts in Powder River County. In that situation, Powder River County was highly impacted, and asked to be included at the table. They were told by the Governor's office that current Montana law did not allow them to be involved. **REP. MENDENHALL** asked if the language in this bill would allow a local government to use this as a stall tactic. **Mr. Blattie** said that he had a hard time reading that into it, and felt it would expedite the process rather than be a deterrent.

**REP. MAEDJE** asked if federal rules dealing with coordination and cooperation could be invoked if this passed in its present form. **Mr. Congdon** said that they would not be invoked, but would be looked to for guidance in terms of what that portion of MEPA means, since it would then read almost identically to the way NEPA reads. The federal rule would not bind them, but the way it was interpreted would provide some guidance in the way they do business. It is the only source to look to. **REP. MAEDJE** asked about adding a friendly amendment stating that it would not be used. The concern is that after this is passed, there is litigation over the word "impact," citing the federal rules, and causing problems which would delay a project. **Mr. Congdon** said that it would not affect their county.

**Closing by Sponsor:**

**REP. DEVLIN** closed by emphasizing that the intent of the bill is to give more consideration to local government when preparing environmental documents, because they are the ones most impacted. They often find they have no more standing than the average citizen who writes a strongly worded letter. The intent is also not to undo some of the MEPA reform that was done during last session. Part of the reform is using permissive language and

making sure that follows throughout the document. As mentioned, not all counties may want to participate, or some may want to participate on a different level. If it is regional, a group of counties may go together to have someone look out after their interests. He asked for a DO PASS on HB 142.

#### **EXECUTIVE ACTION ON HB 132**

***{Tape: 2; Side: A; Approx. Time Counter: 9 - 12.6}***

**Motion:** REP. JACOBSON moved that HB 132 DO PASS.

#### **Discussion:**

**Legislative Staffer Connie Erickson** said that there should be an amendment making HB 132 effective immediately upon passage, because municipal primary elections are in September, and general elections are in November. The current effective date is 10/1/03.

**REP. DEVLIN** requested a conceptual amendment to make the bill effective immediately upon passage.

**EXHIBIT (loh07a04)**

**Motion:** REP. DEVLIN moved that HB 132 BE AMENDED.

**Motion/Vote:** REP. JACOBSON moved that HB 132 DO PASS. Motion carried unanimously, 16-0.

**Motion/Vote:** REP. OLSON moved that HB 132 DO PASS AS AMENDED. Motion carried unanimously, 16-0.

#### **EXECUTIVE ACTION ON HB 147**

***{Tape: 2; Side: A; Approx. Time Counter: 12.7 - 30}***

**Motion:** REP. LAWSON moved that HB 147 DO PASS.

Before discussion, **REP. JACOBSON** told the committee that he has involvement as an office manager for an architectural firm, but is not an architect. He is a one-third owner of the firm.

#### **Discussion:**

**REP. LAWSON** summarized the intent of HB 147 by saying it is an act "permitting" state and local agencies or special districts to adopt fee structures and projected fees to be used under certain conditions in selecting architectural, engineering, and land surveying services. Line 19 states that the agency will then

select the firm considered most qualified based on criteria established under Agency Procedures and Guidelines and the law. The part proposed for change is that the agency "may" adopt procedures that allow fee structures and projected fees to be considered in the selection process, only if the agency has provided all interested firms with detailed statements of the scope of the project and expected services. He said that he received a letter of support from the Mayor of the City of Choteau. Opponents have tried to portray HB 147 as one that would allow fee-based or lower-bid procedure for the selection of consulting architectural, engineering, and land surveying services. He said that he believes HB 147 does not allow that. Current law requires government agencies to make consultant selection based on criteria established under agency procedures and guidelines in the law. HB 147 would give agencies another tool to look at projected fees and fee structures.

**REP. OLSON** stated that Qualified Based Selection (QBS) is there for a reason. The bottom line is not what local and state government should be worried about; it is quality, and they need people that know their business. He said that he has been involved in state contracts, and it is not pleasant having to turn down the low bid and justify your decisions. He commented that they have always been able to justify their decisions based on qualifications. Quality of equipment and quality of engineering services are more important than retaining the lowest bid. He stated that this will open up a hornet's nest, by allowing governments to go for cheap instead of quality. He commented that he got the impression it was "a case of sour grapes," and said he will resist the bill.

**REP. MORGAN** said that she also opposes this bill. Her husband is an estimator for Empire Sand and Gravel in Billings. With QBS in place, several things happen if it is a private job and planners already know from a list of QBS people who will give them a less expensive preparation of the plan. Once the contractor gets the plans for the subdivision, etc., it is his job to take that set of plans and prepare a price with which they go to the table. It is price selection from there on. If this private company selects a QBS company they know is less expensive, the change orders start coming in. **REP. MORGAN** gave first-hand experience with the sub-contractor who prepared and graded the streets in the subdivision they live in and did not use QBS. They have ongoing problems with the streets, and the general contractor has since realized that he did not get a quality product. On two other subdivisions, he has paid more money to have the job done properly. She stated that QBS needs to stay in place.

**REP. JACOBSON** observed that the big problem with this bill is that when construction projects are bid, contractors work from specific documents. If selecting architects and engineers from a price based system, there must be a document, a Request for Proposal (RFP). That document must be nebulous because the agency involved has only a general idea of what they want. For example they may say: "We would like 10,000 lineal feet of new six inch pipe laid for a waterline." They can't address all the utility components or the electrical concerns, or whether there are gaslines in the area. Quoting a price on fairly nebulous documents means we are setting the counties and cities up for potentially major problems.

**REP. CYR** said that he also opposed the bill. He is on the Council for Aging and gave the example of when they put out a bid to add a second floor to the Belmont Senior Center. He said that they couldn't ask for the cost up front, and they wanted the best firm to do the best job.

**REP. MAEDJE** said that he thought this bill could work with some adjustments to it. He said that in his district they are supporting a bond worth \$6 million to \$8 million to build a new school. He has done building design, has been a contractor, and has hired engineers for a commercial project he was designing. His first question was always to ask the hourly rate, and it was not a problem. He commented that it was helpful for him as a contractor during the bidding process. One of the problems with QBS for the school district building a new school is that an exact up-front cost is not known in all circumstances. One of the things this bill would allow is some flexibility for local governments that may not have the money. He pointed out that the bill does say "may." The concerns about whether to use QBS or not is better left up to them. There may be some groups that only look at price because they can't afford anything else. He said an architect has a different scope than an engineer. There is no reason that an architect cannot tell someone that his fee is 10% of the building. He said he was told by one engineer that he was prohibited from saying his hourly rate up front and the county or local government is prohibited from asking that. A lot of small rural communities need to know the cost; if not for the whole project, at least the hourly rate. This bill gives them the flexibility to do that. He said he supported the bill.

***{Tape: 2; Side: B; Approx. Time Counter: 0 - 3.5}***

**CHAIRMAN NOENNIG** asked **REP. LAWSON** for a recap of the attorney general's opinion. (This can be found in its entirety as Exhibit 5 on 1/9/03.) **REP. LAWSON** summarized the opinion by saying that in 1992 Attorney General Marc Racicot spoke about three primary

factors: 1) The federal government did it this way, 2) The American Bar Association did it this way in its model code, and 3) The Statute. In Marc Racicot's words, "It is notable that nowhere in this section is the proposed fee listed as a criteria for the selection of the most qualified firm." The conclusion reached by Marc Racicot is: "State agencies may not consider a proposed fee when selecting architectural, engineering or land surveying services, but may negotiate a fair and reasonable fee after the most qualified firm has been selected."

**REP. MENDENHALL** said this is a long held industry standard and it is good for business and he was in favor of the bill.

**REP. BITNEY** said that he received numerous letters from surveyors, engineers and architects who are very opposed to this bill. This has been in Statute for over 20 years and has been highly successful. It is a complex issue. Alec Hansen, with the League of Cities and Towns, did not testify to support it, and none of the other small communities came to support it. He said the system works now and he is opposed.

**REP. LAWSON** said that he sees this as a strong issue, as far as local control and local government having another option they may or may not use on certain jobs. He asked for a DO PASS.

**Motion/Vote:** **REP. MORGAN** moved that **HB 147 DO PASS**. Motion failed 3-13 with **REPS. LAWSON, HAWK, and MAEDJE** voting aye.

**Motion/Vote:** **REP. DEVLIN** moved that **HB 147 BE TABLED**. Motion carried 13-3 with **REPS. LAWSON, HAWK, and MAEDJE** voting no.

#### **EXECUTIVE ACTION ON HB 146**

***{Tape: 2; Side: B; Approx. Time Counter: 4.6 - 9.3}***

**Motion:** **REP. LAWSON** moved that **HB 146 DO PASS**.

#### **Discussion:**

**REP. OLSON** said they had Capitol-For-A-Day in Roundup in 2001. The community served all the meals, provided local transportation for the Governor's Staff, and provided all the meeting rooms at no charge. It really benefitted Musselshell County, as they were in the process of getting a coal mine opened back up, and there were a lot of questions. The Directors of the Department of Environmental Quality and the Department of Commerce held question and answer sessions all over town that were well attended countywide and by Roundup residents. There were many from surrounding counties as well.

**REP. CYR** said he opposed the bill.

**REP. HAWK** asked what the Secretary of State, the Auditor, and the Attorney General, Superintendent of Public Instruction have to do with Capitol-For-A-Day. **REP. MENDENHALL** commented that he thought it was to take the top people in the Executive Branch and let people meet them and interact with them. **REP. HAWK** asked if they go with the Governor. **REP. MENDENHALL** said they sometimes go with the Governor. **CHAIRMAN NOENNIG** said it may be they tried to pick heads of the major branches of the state. The Governor would be the Executive Branch, the Secretary of State, the Auditor, the Attorney General and the Superintendent of Public Instruction are all elected officials. They each have staffs and budgets, but the funds did not come from any of those. **REP. HAWK** asked if this would affect the Superintendent of Public Instruction, who has a bus and they already go out in the field. **CHAIRMAN NOENNIG** said he did not think so because this bill is intended to prohibit the Capitol-For-A-Day Program and that is solely the Governor's program.

**REP. LASLOVICH** explained that he found out more about his earlier Fiscal Note question, and they have to be expending something or be increasing revenue to have a Fiscal Note. He said that if it is such a great program, he wished Governor Martz would come to Anaconda. He commented that he understood what **REP. SMITH** was trying to do, but would have to oppose it.

**Motion/Vote:** **REP. LAWSON** moved that **HB 146 DO PASS**. Motion failed 0-16.

**Motion/Vote:** **REP. LASLOVICH** moved that **HB 146 BE TABLED**. Motion passed 16-0.

**ADJOURNMENT**

Adjournment: 4:45 P.M.

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REP. MARK NOENNIG, Chairman

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LINDA KEIM, Secretary

MN/LK

**EXHIBIT** (loh07aad)